

In re ) Fair Hearing No. 15,277  
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Appeal of )

The petitioner appeals a proposal by the Department of Social Welfare to sanction his ANFC grant based upon his refusal to cooperate with a job placement found for him.

1. The petitioner lives with his wife and three children and is currently unemployed. He was found eligible for ANFC as an unemployed parent and in September of 1997, signed a "Reach Up Family Development Plan" in which he agreed to begin a work search and to accept all offers of and referrals to suitable work. He was to notify his case manager immediately of any changes in his situation and the Department would support him with car repairs and mileage.

2. In October of 1997, the Department identified an opening for a construction worker and the petitioner attended an interview for that job at the Department's expense. The petitioner was offered and agreed to take the job and was to have begun work on Monday, October 13, 1997. The petitioner does not argue that the job was unsuitable. In fact, he asked the Department to assist him with car repairs he might need to attend that job and gave every indication that he planned to show up on his start date.

3. On October 9, 1997, the Thursday before he was to start work, the petitioner talked with his case manager about car repairs he needed to be able to drive to work. The petitioner was told that \$70 in repairs would be authorized and that he was to let the case manager know right away if the mechanic was agreeable to payment through DET. After hearing nothing that day and knowing he would be out of the office the next day, the case manager left a message for another manager to handle the authorization if the petitioner should come to seek it on Friday.

4. On Friday, October 10, 1997, the petitioner came into the office to seek the \$70 authorization for his mechanic to do the work. The authorization was issued and given to the petitioner to deliver to his mechanic. The substitute case manager talked to the mechanic by telephone that day and was told that the repairs would actually cost more than the \$70 but that he would do it anyway and "see about the rest." He was aware that the petitioner needed the car to start a job on Monday. The authorization form which was carried to the mechanic by the petitioner said that it was valid only until October 13, 1997.

5. The petitioner claims that the car was not repaired for several days and that he was unable to pick it up until Wednesday, October 15, 1997. He claims to have dealt with someone else who worked in the mechanic's shop and that the car was in the lot for several days before

repairs were begun.

6. The petitioner called his prospective employer on the evening of Sunday, October 12, to say that he would not be to work until Tuesday due to car trouble. On Monday, October 13, however, the petitioner drove across the state to attend a court hearing which he says he had forgotten until Sunday evening, the night before. He claims to have used a neighbor's car for that journey. He did not call his case manager until Tuesday, October 14, to relate his problems with the car at which time he claimed that it was still being repaired. As it was too late to try to contact the employer that day, the case manager advised the petitioner to get the car by the end of that day or early the next and to show up for work in the morning. He even authorized mileage in advance (\$43.20) for the petitioner to drive to work that week. The petitioner agreed to this strategy.

7. Although the petitioner claims he picked up the car on Wednesday, October 15, he did not make any attempt to start the job that day. In fact, he never contacted that employer again.

8. Having heard nothing from the petitioner in the ensuing two week period, the case manager mailed him a request to confirm his working status on October 27, 1997. A handwritten notation on that form said, "If you didn't go to work as planned, you need to see me as soon as possible."

9. On October 30, 1997, the petitioner came into the DET office and talked with his case manager. He said that he did not report for the job because he thought at that time that the employer probably wanted nothing to do with him due to an article in the newspaper which appeared about his court date. He admitted, though, that he had not talked with the employer or made any attempt to attend the job.

10. The case manager called the potential employer to ask about the petitioner's concerns. The employer said he knew nothing about any Court problems and had only heard from the petitioner on one occasion, Sunday, October 12, when he said he could not get his car and would be in on Tuesday morning. The employer said he never showed up for work after that and they never heard from him again.

11. On October 31, 1997, the petitioner was sent a notice to come in for a conciliation meeting on November 6, 1997, regarding the information received from his potential employer that he had failed to show up for work. The petitioner came to DET on November 4, 1997, to get a copy of the job order in connection with his court case and talked with his case manager at that time. The petitioner agreed that he had not gone to the job nor talked to the employer but promised that he would try to salvage the job through the intervention of his pastor and that he would return on November 7th after his court date to discuss it. He did not return on that date and did nothing to try to salvage the

job.

12. The petitioner came into the DET office again on the 12th of November to talk about the job for which he had been hired. At that time he blamed his inability to start the job and his ultimate loss of the job on the mechanic's failure to repair and release his car until Wednesday, October 15. He offered no explanation as to why he had not tried to salvage the job after he got the car. The case manager told the petitioner he would check this out with the mechanic and if he verified that information a sanction would not be imposed. Otherwise he would be sanctioned because he had done nothing to attend that job.

13. After talking with the mechanic, the case manager determined that the petitioner was not telling the truth about the date he received the car and decided to sanction him. He sent a notice to DSW to that effect on November 12, 1997, containing the following information:

Did not report for work with potential employer or call employer to arrange alternative start date. Failed to arrange alternate transp. for start date. Failed to notify Reach Up of de facto refusal when it occurred. Failure to discuss situation in good faith--i.e. no info on not working until letter sent by Reach Up staff.

14. Based on this information, DSW notified the petitioner by letter dated November 17, 1997, that his needs would be removed from his family's ANFC grant effective December 1, 1997, due to his refusal without good cause to accept a job offer. The sanction amounted to an \$88 per

month decrease in benefits for the family.

15. The mechanic who repaired the petitioner's car was subpoenaed to testify at the hearing. He appeared to be friendly with the petitioner and clearly was testifying with great reluctance. The mechanic stated that although he could not remember the exact day that he repaired the car, he does remember that he repaired it the same day it was brought to his garage and the same day that he got the authorization to do the repair from DET. He recalls the repair because he had to build a bracket to line up the alternator and crankshaft. He returned the car to the petitioner the same day he repaired it. He is adamant that the car did not and could not have sat in the yard of his garage for several days without him knowing about it because he checks every car and locks it every night before he leaves. He is certain he went to the DET office a couple of days after he had done the work to present his bill and to collect the \$70. In fact, he was observed in the office leaving the request for payment on Tuesday, October 14, 1997, by the case manager. The bill which he left for the repair had the date of October 14, 1997, and was for a total of \$97.98 including a "belt" and three hours of labor. A check was sent to him thereafter dated October 14, 1997 for \$70. The petitioner paid the balance to the mechanic thereafter. There was no evidence that the mechanic had any motive whatsoever for giving false testimony. His testimony

is found to be consistent with a repair accomplished on Friday, October 10, 1997, since October 14, 1997, a Tuesday, and the date when he presented the bill is two working days after the date of the repair. This testimony is also consistent with the understanding of all the parties that the car was to be repaired on Friday so the petitioner could go to work on Monday. The mechanic's testimony is found to be entirely credible and supports a finding that the car was repaired on October 10, 1997, and returned to the petitioner that same day. As the petitioner's testimony that the car was not actually repaired until October 15, 1997, is inconsistent with the documentary evidence and the mechanic's credible testimony, it is rejected as not credible.

16. It must be concluded that the petitioner presented no credible reason for his failure to start the job he had agreed to take with DET. It is found that he engaged in a pattern of nondisclosure and deceit with the Department with regard to his planned attendance at this employment which even extended to getting his car repaired at the Department's expense and requesting and keeping prospective mileage reimbursement for transportation to a job he never intended to take.

ORDER

The decision of the Department to sanction the

petitioner is affirmed.

REASONS

The petitioner does not dispute that he is required to be a Reach Up participant as a condition for receiving ANFC and is obligated under that program to participate in employment activities including the acceptance of suitable work which may be offered to him. See W.A.M. 2343.2, 2345.3. Neither does he disagree that he may only avoid those activities if he shows good cause and that if he does not, he may be sanctioned. W.A.M. 2349, 2351.

Under the Department's regulations, a de facto refusal to participate may be made if an individual fails without good cause to "show up for work." W.A.M. 2349.4. That regulation goes on to say:

When the failure or refusal is implied (de facto) by an individual's failure without good cause to fulfill one or more of the above standards, the Reach Up case manager may attempt to contact the individual and discuss the act or pattern of behavior in question. If the individual fails to cooperate or fails to meet good cause criteria, the conciliation process begins.

The conciliation process requires the Department to send the written charge of failure, in this case, failure to attend a job, to the petitioner and to allow him to respond to the factual allegations, to offer any extenuating circumstances which might be hindering compliance and to see if problems could be resolved so that the Reach Up requirements can be met. W.A.M. 2350. Conciliation



attempts are deemed to be successful if the participant agrees to resume participation in the "activity which was the source of the determination of failure to comply without good cause" within five days and participates satisfactorily for at least two weeks. W.A.M. 2350.1.

Conciliation attempts are deemed to have failed and sanctions are imposed when "the participant has exhibited a pattern of behavior demonstrated in a series of actions from which refusal to participate can be reasonably inferred." W.A.M. 2350.2. At that point the case manager must send a notice of sanction to the eligibility specialist at DSW who imposes the appropriate sanction, in this case, the exclusion of the non-cooperating recipient's needs from the ANFC grant. W.A.M. 2351.1.

The petitioner in this matter was offered ample opportunity to explain why he was unable to attend this job and to remedy his non-attendance by showing up there for work. During the conciliation attempt, in spite of his verbalized willingness to cooperate, the petitioner made absolutely no effort to attend this job even at the time when he clearly had transportation available to him. He did not tell the truth about why he missed his initial start up date and offered little or no explanation for his continued failure to show up at this job. The petitioner, who appears to be quite intelligent and represented himself ably, though unsuccessfully, at the hearing, never indicated that he did

not understand what was required of him. Rather he seemed to believe if he could show that he had no working car until Wednesday, October 15, he could avoid his obligation to accept this job. His subsequent inaction was predicated upon this belief.

It is fair to conclude, then, that the petitioner exhibited a pattern of behavior in this matter from which his failure to participate in Reach Up, both in the initial failure to attend employment and the subsequent non-cooperation at conciliation, can be reasonably inferred and that based on this information the Department imposed the appropriate sanction on the petitioner. W.A.M. 2351.1. The petitioner should be aware that since this is his first sanction, he can remove it at any time by demonstrating his willingness to comply with the Reach Up program. W.A.M. 2351.1.

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